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Neb. Tribe Seeking Kids' Remains Fights Army's Defense

By **Abigail Harrison**

Law360 (September 23, 2025, 6:37 PM EDT) -- A Native American tribe seeking to repatriate children's remains currently held on U.S. Army property told the Fourth Circuit on Tuesday that the federal government is misrepresenting the tribe's complaint by claiming the tribe improperly said it couldn't locate living relatives.

The Winnebago Tribe of Nebraska said in a Tuesday response that a letter referenced in one of the Army's recent court filings was already in the record on appeal. Furthermore, what was said in front of a Fourth Circuit panel during oral argument earlier this month lines up with allegations the tribe made in its 2024 complaint, according to **its response**.

"If appellees wished to highlight any 'contradiction' between Winnebago's counsel's statement and the record, their counsel had that opportunity during oral argument," Winnebago counsel Beth Margaret Wright of Native American Rights Fund said in the response.

Last week, the Army **told the Fourth Circuit** in a supplemental authority filing that the tribe was wrong to claim during oral argument that it couldn't find living relatives of Samuel Gilbert and Edward Hensley, because a 2023 news article — referenced in a letter contained in the record — pointed to the existence of those relatives. The Army said it's committed to repatriating the boys' remains as long as the tribe can identify a living descendant.

But statements from the tribe's counsel **during oral argument** remain consistent with its allegations, including Gilbert and Hensley's lack of lineal descendants and the good faith, but unsuccessful, effort of a Winnebago Tribal Historic Preservation Officer to find a close living relative, Wright said.

"Samuel and Edward died in 1895 and 1899, respectively, without any children. Identifying the closest living relative of children who passed over 125 years ago, without any lineal descendants of their own, is challenging," Wright said.

Army regulations around disinterment at Carlisle Barracks Main Post Cemetery, housing the remains of 180 children including Gilbert and Hensley, require the person requesting disinterment to sign an affidavit that they are the decedent's closest living relative. The Army also requires a second sworn statement from another witness that the person is a true relative.

Finally, that letter addresses irrelevant factual circumstances to Winnebago's right to repatriate Native American human remains under the Native American Graves Protection and Repatriation Act, she said.

The tribe sued the Army and several of its leaders in early 2024, alleging that it violated NAGPRA in denying the tribe's request to repatriate Gilbert and Hensley's remains from the former Carlisle Indian Industrial School, a Native American boarding school in Pennsylvania. The school's cemetery now sits on the grounds of the U.S. Army War College barracks, where the children's grave sites are part of a walking tour.

The tribe alleged that more than 10,000 children spanning nearly 50 tribes passed through the boarding school's doors. After the boys died, they were buried without the consent of their next of kin, according to the complaint.

In August 2024, a Virginia federal judge ruled the Army **wasn't required to repatriate the remains** because the school's cemetery is not a "holding or collection" under NAGPRA, and exhuming the remains would upend excavation laws on tribal and federal lands. The tribe then appealed.

"The Army's letter does not bear on any issue on appeal. Congress passed NAGPRA as a rejection of museums' and agencies' unilaterally imposed policies for the repatriation of tribal nations' relatives' remains. The Army is required to follow NAGPRA to repatriate Samuel's and Edward's remains to Winnebago," the tribe told Law360 in a statement through its counsel.

The DOJ declined to comment.

The Winnebago Tribe of Nebraska is represented by Gregory A. Werkheiser and Jessie Barrington of Cultural Heritage Partners PLLC, Danelle J. Smith of Big Fire Law & Policy Group LLP and Beth Margaret Wright, Jason Searle and Wesley James Furlong of the Native American Rights Fund.

The U.S. Army is represented by Adam J. Gustafson, Thekla Hansen-Young and Tamara Rountree of the U.S. Department of Justice's Environment and Natural Resources Division.

The case is Winnebago Tribe of Nebraska v. U.S. Department of the Army et al., case number 24-2081, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Crystal Owens and P.J. D'Annunzio. Editing by Rich Mills.

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